S.B. CIVIL WRIT PETITION NO.7888/2007

Govind Prasad and ors.
vs.
State of Rajasthan and ors.

Date : 4.12.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.BL Purohit, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners are aggrieved against the order of the executing court dated 26.10.2007 by which the petitioners' application filed under Section 151 CPC was dismissed.

In this writ petition, the petitioners submitted that they are the owners of the property by virtue of patta granted by the Gram Panchayat to one Deep Chand for the land described in the said patta, copy of which has been placed on record in this writ petition as Annex.1, and the petitioners purchased the said property from said Deep Chand. According to the petitioners, the petitioners' predecessor in title – Deep Chand when sought permission to raise construction of

building over the property in dispute, then the respondent temple gave its consent in writing, copy of which has been placed on record as Annex.2. The petitioners' predecessor in title has also filed a civil suit against the District Collector, Nagaur as back as in the year 1976 which was registered as Civil Suit No.48/1976 wherein some of the persons interested in the respondent temple appeared as witness an the trial court after considering all evidence granted decree for permanent injunction in favour of the petitioners' predecessor on 9.12.1977 (Annex.5). The appeal against the said judgment dated 9.12.1977 was dismissed by the appellate court on 19.10.1983 (Annex.6). After all these events, the petitioners purchased the property from Deep Chand's wife Smt. Sushila Devi and enjoying the possession of the property and property itself since then.

Before all above, some dispute arose between respondent no.3 temple and Gram Panchayat, Merta Road. Respondent no.3 filed civil suit no.176/1959 against the Gram Panchayat, Merta Road which was decreed in favour of respondent no.3 Temple and first appeal of Gram Panchayat was dismissed and the matter ultimately came up before this Court in regular second appeal no.209/1967. In second

appeal, detail written compromise was submitted by the Gram Panchayat and the Managing Committee of the Temple, copy of which has been placed on record by the petitioner as Annex.4. The compromise was duly recorded and a compromise decree was passed by High Court on 22.2.1974 (Annex.3) which is in favour of the Temple. In the decree, it is specifically provided that any patta if have been granted out of the land of various khasras mentioned in the compromise shall stand cancelled. It appears that that was due to the fact that the litigation between the Temple and the Gram Panchayat was prior to grant of pattas to the petitioners' predecessor Deep Chand and several other persons and pattas were issued during pendency of litigation and were effected by principle of lis-pendence. The decree holder – Temple submitted execution petition before the trial court and also submitted an application for measuring the property covered by the decree so that Temple may take possession of the property. In execution, the executing court on the prayer of the decree holder obtained a site report, copy of which has been placed on record by the petitioner as Annex.16. In the report, it is mentioned that initially, the Tehsildar did not provide the relevant map of the property but ultimately that

cloth map (latha map) and revenue record were provided by the concerned patwari of the area and thereafter, a detailed report was prepared and a sketch map was incorporated in that report. That report was submitted in the executing court.

At this stage, the petitioners submitted an application under Section 151 CPC (Annex.13) before the executing court. For the reasons best known to the petitioners, they did not mention any fact with respect to the title of Deep Chand and straightway submitted that the executing court has obtained site inspection report in execution and only contention of the petitioners in the application is that the shops in dispute situated in the backside of the house were in dispute in a litigation initiated by Deep Chand against the District Collector, Nagaur by filing suit no.48/1976 for injunction. Said suit for injunction was decreed in favour of Deep Chand and the Court held the land to be abadi land and defendant – District Collector, Nagaur was restrained from evicting plaintiff Deep Chand from the land covered by patta Annex.1. The appeal against the said judgment and decree preferred by District Collector, Nagaur was dismissed by the appellate court. Thereafter, in the application, the petitioners submitted that the halka patwari

has wrongly included the properties of the petitioners in the measurement. Only on these grounds of decree obtained by the petitioners' predecessor against the Collector, Nagaur and objection about inclusion of the same property in the report of patwari, the petitioners submitted that their shops may not be demolished.

This objection petition filed under Section 151 was dismissed by the executing court by the impugned order. The executing court held that the suit no.48/1976 filed by Deep Chand was not against the decree holder – Temple nor they were party in that suit, therefore, any finding recorded in the suit no.48/1976 is not binding upon the decree holder of suit no.179/1959 in which ultimately compromise decree was passed by this Court on 22.2.1974. The executing court also rejected the petitioners' contention about their title as in the second appeal against Gram Panchayat – Deep Chand's predecessor, this Court passed the decree and cancelled the pattas which were given by the Gram Panchayat to various persons during pendency of litigation. The executing court also rejected the petitioners' any other right in view of the above facts by order dated 26.10.2007.

Hence, this writ petition to challenge the order dated 26.10.2007 passed by the executing court.

Learned counsel for the petitioners vehemently submitted that the petitioners are objectors in execution of the decree and they objected to the execution of the decree. Therefore, it was the duty of the decree holder to move the application under Order 21 Rule 97 CPC and without such application and without such determination on that application, the executing court could not have proceeded to execute that decree. It is also vehemently submitted that the report obtained by the executing court dated 19.5.2004 (Annex.16) is absolutely illegal in view of the fact that it contains no measurement of the land and it is only opinion of the Halka Patwari and is not a conclusive proof that the petitioners' property is covered by the decree which is sought to be executed by the respondent Temple. It is also submitted that the petitioners are owners of the property and, therefore, they cannot be removed from the said property nor their construction can be demolished.

In alternative, learned counsel for the petitioners further submitted that the application

filed under Section 151 CPC itself may be treated to be an application under Order 21 Rule 97 CPC.

I considered the submissions of learned counsel for the petitioners and perused the entire record placed by the petitioners in this writ petition.

It is clear from the facts of the case that a litigation started between the Gram Panchayat and respondent Temple as back as in the year 1959. The litigation continued upto 22.2.1974 when the regular second appeal no.209/1967 preferred by Gram Panchayat was decided by this Court and a compromise decree was passed wherein there is a specific mention that by that time, if any patta was granted by the Gram Panchayat, that will stand cancelled. It appears that it was done for obvious reason that the property could not have been dealt with by Gram Panchayat during the pendency of the litigation which continued from the year 1959 to 1974. The patta produced by the petitioners was not set up as a defence in execution by the petitioners which is apparent from the contents of the application submitted by the petitioners before the executing court. But patta in question is dated 17.3.1971 and, therefore, it was issued

by the Gram Panchayat, Merta Road when entire property was under litigation and, therefore, Deep Chand and his successor is bound by the decision given in decree dated 22.2.1974. The objections raised by the petitioners were twofolds – one was that the petitioners' predecessor obtained decree against the Collector, Nagaur wherein some of the persons of the Temple appeared as witness. The executing court held that said decree passed in Deep Chand's case is not binding upon the respondent Temple. Admittedly, the respondent Temple was not party in the suit filed by Deep Chand. The respondent temple already filed the suit against Deep Chand's predecessor in the civil court and obtained the decree against said Deep Chand's predecessor – Gram Panchayat at the relevant time. In the High Court when the appeal was preferred by the Gram Panchayat, in that appeal, Gram Panchayat and Temple obtained compromise decree. Learned counsel for the petitioners could not satisfy how the decree passed against the Collector, Nagaur was or is binding upon the Gram Panchayat, apart from the fact that how it is binding upon the present decree holder - Temple. The other objection is about inclusion of the petitioners' shop in the map for which it appears that the map was prepared

by the concerned authority with the help of revenue record and “cloth map”. Since in the application, the petitioners only prayed that their construction may not be removed but they did not sought adjudication of their right, title and interest in the property nor they stated that they are not bound by the decree despite the fact that they are claiming title through Gram Panchayat only and Gram Panchayat was party in the civil suit no.176/1959 in which High Court passed the decree on 22.2.1974. The petitioners, if had any grievance against the decree passed in civil suit no.176/1959, then initially, it could have been the grievance of Deep Chand in whose favour the patta was granted by the Gram Panchayat during the pendency of the civil suit no.157/1959 in which the compromise decree was passed and pattas were got cancelled by Deep Chand's predecessor – Gram Panchayat itself.

In view of the above reasons, there may be a decree in favour of Deep Chand but granted only against District Collector, Nagaur alone and was passed when Deep Chand may have valid title deed to bound the District Collector, Nagaur but not binding upon Gram Panchayat or respondent Temple. That decree passed by the High Court on 22.2.1974

is binding upon the Gram Panchayat and Deep Chand has not challenged the decree passed in second appeal no.209/1967 any time in his life time. Therefore, Deep Chand's successor in interest cannot have any better right. Be it as it may be, the fact remains that the petitioners' own application contains no fact about their title but has been pleaded in this writ petition, therefore, that aspect has been considered by this Court as argued by learned counsel for the petitioners.

So far as the contention of the learned counsel for the petitioners that when the objector submitted an objection, then the decree holder was under an obligation to move application under Order 21 Rule 97 CPC and the petitioners could not have moved this application, is devoid of any force as this issue has been settled by the Hon'ble Supreme Court in various judgments wherein it has been held that a stranger to the decree also can submit an application under Order 21 Rule 97 CPC and it is not necessary that the stranger should loose possession and thereafter, he can move petition under Order 21 Rule 100 CPC only. The Hon'ble Supreme Court has already laid down that the objector without his dispossession can move application under Order 21 Rule 97 CPC.

Therefore, the appropriate remedy for the petitioners was to move application under Order 21 Rule 97 CPC if he wanted to raise objection under Order 21 Rule 97 CPC or under Section 47 CPC.

So far as treating this application under Section 151 CPC as an application under Order 21 Rule 97 CPC is concerned, this Court is not inclined to do so because of the reason that in this application, only objection is that Deep Chand, the predecessor in title of the petitioner, obtained decree against the District Collector, Nagaur, therefore, the decree cannot be executed. The decree admittedly was against the District Collector and was not binding upon the respondent Temple in any manner because the Temple was not party in the said suit in which decree was obtained by Deep Chand and so far as objection of wrong inclusion of the petitioners' property in the survey list is concerned, that also is an objection having foundation on the basis of the said decree and title of Deep Chand only. Therefore, unless the objector prima-facie shows something on the basis of which he can resists the execution of decree, then only an application under Order 21 Rule 97 CPC can be entertained. Therefore, as such, the application under Section

151 CPC has no reason to be treated as an application under Order 21 Rule 97 CPC and if treated, then has no merit in the application.

At this stage, learned counsel for the petitioners submitted that the respondents will demolish the petitioners' property today, therefore, some time may be granted.

Since this Court is of the view that the petition under Order 21 Rule 97 CPC can be filed by the objector, therefore, in the interest of justice and looking to the exceptional reasons and urgency in the matter, this Court grants seven (7) days time to the petitioners to take appropriate steps, if their rights are affected by the execution of the decree and the petitioners have any remedy available to him in accordance with law.

For seven (7) days, the petitioners property may not be demolished and after expiry of 7 days, the executing court will be free to proceed to execute the decree. It is made clear that this order has been passed for the present petitioners only and none of the proceedings of the execution of the decree against the other persons is stayed.

With the aforesaid observations, this writ petition is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya